

C436mooc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 MONIQUE DA SILVA MOORE, et
4 al.,

Plaintiffs,

5 v.

11 CV 1279 (ALC)

6 PUBLICIS GROUPE SA and MSL
7 GROUP,

8 Defendants.

9 -----x

New York, N.Y.

10 April 3, 2012

4:00 p.m.

11 Before:

12 HON. ANDREW J. CARTER, JR,

13 District Judge

14 APPEARANCES

15 SANFORD WITTELS & HEISLER, LLP

16 Attorneys for Plaintiffs

17 BY: STEVEN WITTELS

JANETTE WIPPER

18 SIHAM NURHUSSEIN

19 JACKSON LEWIS, LLP

Attorneys for Defendants

20 BY: JEFFREY BRECHER

VICTORIA WOODIN CHAVEY

21 BRETT ANDERS

C436mooc

(In open court; case called)

THE DEPUTY CLERK: Counsel, please state your appearances.

MS. WIPPER: Janette Wipper for the plaintiff.

MR. WITTELS: Steven Wittles, your Honor.

MS. NURHUSSEIN: Siham Nurhussein for the plaintiff.

MS. CHAVEY: For the defendant MSL Group, victoria Chavey.

MR. BRECHER: Jeffrey Brecher.

MR. ANDERS: Brett Anders.

THE COURT: Good afternoon. Let me just first make sure that we understand which declarations we're talking about. There has been a reference in the papers to four declarations, but I think there are nine declarations attached. Which ones are we referring to in terms of the plaintiff's request to file these declarations under seal?

MS. WIPPER: Your Honor, there are six declarations that were filed under seal. They are the nonplaintiffs' declarations that were filed. All the plaintiffs have filed -- the seven filed the declarations that are unsealed.

Would you like the names of the declarants?

THE COURT: Sure.

MS. WIPPER: On the record I can say their names?

THE COURT: We can go off the record as you say their name. Let's go off the record.

C436mooc

(Discussion off the record)

THE COURT: Let me hear from plaintiffs as to why these declarations need to be filed under seal. I understand plaintiffs' position is that these potential individuals could face retaliation. Why is this case different from any other civil rights case in which plaintiffs can face potential retaliation?

MS. WIPPER: Yes, your Honor. If I may first address the legal standard. Usually declarations are filed in support of a dispositive motion and in that case there would be judicial documents that would be subject to the heightened standard because of the presumption of public access to would attach. Here because this is a nondispositive motion that will not resolve any litigants' substantive rights, there is a lower good cause standard just to show a baseline showing of potential harm from disclosure, which we believe we can show in this case due to a fear of retaliation that has been expressed by not only the declarant but others that we talked to that did not feel comfortable filing declarations because of the fear of retaliation.

Some of the examples of the retaliation are our lead plaintiff, Monique DaSilva Moore was terminated from her current position two weeks after her current employer was notified of this lawsuit through a third-party subpoena. That is well known in the industry and she is also having a very

C436mooc

1 difficult time finding new employment.

2 Secondly, current employees we have heard that
3 leadership at the company has been asking them on a regular
4 basis whether they have been in contact with plaintiffs'
5 counsel in this case, and it has chilled participation greatly
6 and also the fear of retaliation has increased as a result.

7 One individual brought her lawyer to a meeting with
8 counsel, defense counsel, because she was so afraid to talk to
9 them due to the fear of retaliation from the company.

10 THE COURT: These individuals, these names we won't go
11 into, what is their purported involvement in this litigation
12 going to be?

13 MS. WIPPER: So of the six, two are men. So they are
14 obvious witnesses and are not absent class members and are only
15 supporting the plaintiffs in the case. One is an HR
16 representative and that would fall outside of the class. She
17 submitted a declaration about the policies at issue. She is a
18 witness. There is another woman that I mentioned earlier who
19 is outside of the class period, who is also submitting it just
20 as a witness. So they are not parties. There is only two of
21 these six who are potential class members.

22 THE COURT: Regarding those two, if they are in fact
23 potential class members, if your concern is that their name
24 gets out there, wouldn't their name be public record anyway by
25 the time they become class members?

C436mooc

1 MS. WIPPER: Yes, your Honor. In terms of it they opt
2 into the lawsuit, yes, they would. At this time they haven't
3 decided whether they would opt into the lawsuit. What we would
4 propose to the Court is if we can redact in lieu of a sealing
5 the declarations, just redact identifying information so their
6 name and address and anything concerning where they work, the
7 accounts they worked on, anything that would show who they are,
8 but the substance of the declaration can be in the record,
9 which is really what is important to the motion is the job
10 duties and the things that the Court would be considering to
11 determine whether the plaintiffs are similarly situated to the
12 class.

13 THE COURT: Thank you.

14 We'll hear from defendants.

15 MS. CHAVEY: Thank you, your Honor. I don't think
16 that the plaintiffs have addressed what we think is the
17 fundamental issue here with regard to their request to seal
18 these declarations, and that is how are the declarations
19 presented in this case differ from any other case. If the
20 declarations are permitted to be sealed here on no
21 particularized showing of potential for retaliation against
22 these former employees -- none of them work for us any longer,
23 so the fear of retaliation appears to be fear that other
24 parties who aren't involved in this litigation would be
25 retaliated against them. But the request would be a request

C436mooc

1 that could be made in any case, on any matter and would prevent
2 the Court from viewing and from the parties from fully
3 exploring the declarations that were made. The public has a
4 right to know the information being filed with this Court,
5 whether it is the name of the individual, the arguments made,
6 or what have you.

7 The argument about potential publicity that might
8 attach to these individual named is a little hard for us to
9 understand because the plaintiffs have consistently sought
10 publicity for this case from the time it was filed. In
11 February 2011 Ms. Moore's name has been put into the media by
12 her lawyers and her lawyers have given interviews. They have a
13 press release on their website still with regard to this case.
14 So Ms. Moore was thrust into the public eye by her lawyers on
15 her behalf. Just this week Ms. Wipper again was quoted in the
16 news with regard to other issues in this case that don't relate
17 to the matters that your Honor is taking up today, but there is
18 publicity around this case because the plaintiffs have sought
19 it.

20 THE COURT: Let me find out from the plaintiffs again
21 what the position is that corroborate the fact that these six
22 individuals that we're discussing. Is it correct that all six
23 of these individuals are no longer employed with the defendant,
24 is that correct?

25 MS. WIPPER: Yes, your Honor. But there is still a

C436mooc

1 fear of retaliation because it is a close-knit PR industry
2 where they believe that people inside of MSL will talk to
3 others outside of MSL. So the fear is really about the
4 industry, the network within the industry. It is not limited
5 to current employees. We have also talked to current employees
6 who did not submit declarations due to their fear of
7 retaliation. That is why I address that as well, the current
8 employees.

9 THE COURT: But for these individuals, these are all
10 former employs and your primary concern is their identities and
11 you are willing to have the declarations filed, but you wish
12 that their identities should be redacted. Is that because of a
13 fear of retaliation within the publishing industry?

14 MS. WIPPER: Yes. The publish relations industries.

15 THE COURT: Are all of these individuals still
16 employed in the public relations industry?

17 MS. WIPPER: Yes.

18 THE COURT: All of them?

19 MS. WIPPER: I believe so, yes.

20 THE COURT: These concerns that you have spoken about
21 in terms of specific instances of retaliation, these specific
22 instances all occurred at MSL Group, is that correct?

23 MS. WIPPER: Yes, your Honor.

24 THE COURT: Do you have any specific instances of
25 retaliation at any of these other public relations firms?

C436mooc

1 MS. WIPPER: Well, Monique DaSilva Moore our lead
2 plaintiff was at Ogilvy, which is a direct competitor, and that
3 is where she was terminated from, Ogilvy. It was a two-person
4 layoff about two weeks after they were served as subpoena in
5 this case for her employment records through third-party
6 subpoena. They were put on notice about the case. She hasn't
7 filed a claim against Ogilvy. However, there is a belief that
8 there was a relationship between the notification of this case
9 and her termination.

10 THE COURT: You said it was a two-person layoff at
11 Ogilvy?

12 MS. WIPPER: Yes.

13 THE COURT: And the other individual that was laid
14 off, was that person in any way associated with this lawsuit?

15 MS. WIPPER: No. I don't have the information about
16 that person, but it didn't look like a typical layoff that
17 would impact a large number of people. It looked like
18 terminations because it was only two people.

19 THE COURT: Let me hear from defendants as to
20 defendants' position on plaintiffs' suggestion that you simply
21 file the declarations not under seal but under redacted names.

22 MS. CHAVEY: Your Honor, I don't know how that would
23 be consistent with the Court's general principle of allowing
24 filing to be available to the public. It is a request that
25 doesn't have any boundaries. And if it works in this case to

C436mooc

1 just redact the names, it would work later in the case and
2 other cases. The information that underlies the plaintiffs'
3 position appears to be rank speculation. To suggest that a
4 nonparty who is not represented here in court conducted a
5 layoff in retaliation and some sham reason, I think that is
6 sheer speculation. There is no evidence of that. We don't
7 have any information about it either way and the plaintiffs
8 don't either and haven't articulated any.

9 Any concerns that the plaintiffs may have heard from
10 people about why or why not get involved in the lawsuit aren't
11 before the Court. What we're focused on is the six people who
12 have come to the Court and say an equal pay act claim
13 nationwide involving all of these different people in all of
14 these different jobs should be conditionally certified. We
15 think it would be appropriate and consistent with the Court's
16 general means of operating that they did so by using their
17 names and there is no reason not to.

18 They have agreed to eject themselves into this case.
19 Some of them as counsel stated don't have an opportunity to
20 join, for example because they are male, but they have brought
21 themselves into the courthouse by way of their affidavit to
22 support the plaintiffs' position. There is no reason that has
23 been articulated as to why they should be able to shield their
24 identity from any of the publicity or anything that plaintiffs
25 may generate further in this case.

C436mooc

1 THE COURT: Plaintiffs' concern about the retaliation
2 within the industry, again for these six individuals, four of
3 these individuals are witnesses and are not potentially
4 plaintiffs, for those four individuals if they are in fact
5 witnesses at this trial, isn't their identity going become
6 public at some point anyway?

7 MS. WIPPER: Absolutely, your Honor. The only reason
8 we're seeking to file these under seal now is because our
9 interpretation of the case law is not judicial documents at
10 this point. This is a preliminary nondispositive motion and
11 the presumption of public access that attaches, it is a
12 judicial document like filed in support of summary judgment or
13 trial or something of that nature where the litigant's
14 substantive rights are decided by the Court, we would not be
15 seeking to file the documents under seal.

16 At this point at this stage because of what has gone
17 on in terms of what I have already described, we felt that it
18 was the best course of action to file the declarations under
19 seal or at a minimum try to seek to protect the identities of
20 these individuals because the standard was lower and their fear
21 met the lower standard, the baseline showing of potential harm.

22 THE COURT: If your concern is the potential for
23 retaliation, if you are correct and if it is the case that
24 within this industry -- just arguendo -- there is going to be
25 retaliation, within the industry if any of the employers within

C436mooc

1 that industry find out that any of these individuals are
2 involved in this lawsuit in any way, if we accept that as true
3 then if we seal these documents, we're only delaying the
4 retaliation, is that essentially what you are saying?

5 MS. WIPPER: Well, they can make a choice later if
6 they want to submit declarations in support of a dispositive
7 motion. If there is a summary judgment motion filed, and at
8 that point we would obviously have a much higher burden to show
9 that the documents should be filed under seal, and at that
10 point we may have more information about retaliation. This is
11 everything we heard so far in this case. There hasn't been a
12 lot of discovery. We haven't taken depositions of the people
13 at issue about this retaliation. Mainly, the president of the
14 company is the person that everyone is extremely afraid of and
15 they think that he will take action or talk to others that will
16 impact their employment opportunities.

17 So we're not at that point where we can say definitely
18 we can meet the standard later when there is judicial documents
19 at issue. However, we'll have much more discovery at that
20 point at the close of discovery and it may be that that is
21 true. Right now it is a nondispositive motion and so the
22 standard that we need to meet now is much lower and we believe
23 what we have heard so far is sufficient.

24 THE COURT: Let me hear from defendants.

25 MS. CHAVEY: Judge, two things we would like to add.

C436mooc

1 One is counsel has referred a couple times to all that has gone
2 on and this is all the information they have. There has not
3 been nothing that has gone on that has been presented other
4 than Ms. Moore who is the lead plaintiff was apparently laid
5 off from her position at Ogilvy at some point just before her
6 deposition, which was also after her employment records were
7 subpoenaed.

8 The headlines were prominent about Monique DaSilva
9 Moore filing this lawsuit and there was a lot of press in the
10 Trade Press, PR Week, as well as the Wall Street Journal and
11 Bloomberg. There was a lot of press attention generated by
12 plaintiffs' counsel at the filing of this case and all of it
13 included Ms. Moore's name. So that is all that has gone on.
14 There is no reason to think, no reason that has been presented
15 anyway, that there was any connection between her participation
16 in the lawsuit and the layoff of her and I guess somebody else
17 at Ogilvy.

18 In addition, your Honor, it is not up to these six
19 declarants as to whether they continue their involvement in the
20 case. Their involved in the case, we intend to depose these
21 people. Even if they don't choose to make themselves witnesses
22 at trial, we can subpoena them for trial and take trial
23 depositions if they are out of the reach of a subpoena. They
24 are in the case at this point. We know who they are. Our
25 clients have been attending our depositions. So in terms of

C436mooc

1 having the declarations marked as "attorneys eyes only," I
2 don't know how we would do that and have our client there,
3 which I think we have every right to have, because then
4 obviously the identity of the declarant who is now a deponent
5 would become known to our client. I just don't know how that
6 would work. These people have come into this case and they
7 supported the plaintiffs' position and there is no reason that
8 has been brought forward to take this unusual step of shielding
9 their identity.

10 THE COURT: Plaintiffs.

11 MS. WIPPER: If I could just respond to a couple
12 points. First, Ms. DaSilva Moore never spoke to the press.
13 This is a high-profile case. This is a civil rights case that
14 addresses important issues to the public and therefore there
15 was press coverage, but she has never spoken to the press.

16 With respect to designating confidential documents and
17 public information, defendants have designated every single
18 document produced in this case, including documents that are on
19 their website, as confidential. We did not object. We
20 accepted that confidential designation, filed everything under
21 seal mainly because of their overdesignation. Because at this
22 stage in the case where there was a nondispositive motion, we
23 didn't believe it was necessary now, although it may be later
24 during summary judgment or during a dispositive motion
25 briefing, to challenge those designations. But the reason that

C436mooc

1 everything has been filed under seal is mainly because they
2 have designated everything that they produced, including their
3 website press releases as confidential.

4 To respond to defense counsel's comment concerning
5 everything that has gone on, it wasn't just Monique DaSilva
6 Moore. It is also the fact that defense counsel is talking to
7 absent class members before this case has been certified, which
8 is questionable in and of itself to asking them on a regular
9 basis whether they have talked to plaintiffs' counsel, which
10 some courts would find improper. We haven't raised this issue
11 at this point. We may raise it at a later stage. There has
12 been a lot that has gone on to the point where a current
13 employee brought their own lawyer into a meeting because she
14 was so fearful of retaliation of the company.

15 So this is not something that is speculative from our
16 position. This is something that is real and we have a duty to
17 the people that submit these declarations to try to protect
18 their job opportunities and not have them in situation where
19 they are fired like our lead plaintiff potentially because of
20 their involvement. So that is why we filed them under seal.

21 THE COURT: Just so I am clear your concern that these
22 six individuals will face retaliation by other employers in the
23 industry is based on Ogilvy's laying off of Ms. DaSilva Moore
24 and another individual and what else? Is that it?

25 MS. WIPPER: It is also the president of MSL that they

C436mooc

1 are particularly scared of. That person, Jim Tsokanos, is the
2 person that we were told the people who did not submit
3 declarations the reason that they did not -- some of which did
4 start the process and stopped midpoint and said, I know he is
5 going could come after me and I cannot do this. He is
6 currently at MSL and he is a critical player in this case and
7 so it is not just Ogilvy and plaintiff DaSilva Moore. It is
8 also the actor within MSL that potentially could talk to others
9 outside in the industry. It does come back to MSL in term of
10 the retaliation.

11 THE COURT: What is your belief that the president of
12 MSL would be able to have an effect on these other employers?
13 Is essentially your argument the president of MSL will be so
14 upset about this that he would call the other employers of the
15 industry and ask them to retaliation against these individuals
16 and these other employers would do so?

17 MS. WIPPER: I am not saying it is to that extent. I
18 am just saying that the retaliation I think would be more
19 subtle. I don't think he would call and say, Fire this person.
20 That is not what I am alleging. I am saying that it is not a
21 huge industry. This is not a huge company. This is only a
22 group of six people that we're talking about. He could
23 negatively disparage them in the industry and that could lead
24 to them having a hard time finding employment. There is
25 several people that expressed this to us. So that is their

C436mooc

1 belief. They work in this industry. We don't. That is
2 essentially what we heard over and over again.

3 THE COURT: Again, getting back to these six
4 individuals, it is my understanding that these six individuals
5 are not only no longer employed at MSL but are in fact employed
6 somewhere else within the industry?

7 MS. WIPPER: Yes.

8 THE COURT: So your hypothesis is not that the
9 president of MSL would be able to keep them from getting other
10 jobs, but the president of MSL would be able to influence their
11 current employers to fire them?

12 MS. WIPPER: I don't know if it would lead to
13 termination. For a retaliation claim it has to be adverse
14 employment action. It could they are no longer being
15 considered for promotions, they are nothing longer being
16 groomed for the next level. I don't know how it would play
17 out. There is a real fear. It is a network. There is a close
18 network in this community. People talk all the time and they
19 perceive him as somebody who is -- they are fearful.

20 THE COURT: Let's go step by step through this. The
21 first name that you mentioned, everyone has that on their mind
22 that first name, where is that person employed and what does
23 that person do?

24 MS. WIPPER: You mean their current employment?

25 THE COURT: Their current employment. You are

C436mooc

1 claiming these people face a real fear of retaliation of some
2 sort. I am trying to figure out where this is going, and how
3 much basis there is to believe these individuals could face
4 retaliation as a result of their names being disclosed in this
5 lawsuit.

6 MS. WIPPER: I apologize, your Honor. I don't have
7 their current employment here with me. I could submit that to
8 you tomorrow where all the declarants currently work.

9 THE COURT: I guess what I am saying is the name of
10 their employer is not quite so significant as what it is they
11 are doing. You just indicated some concern that they may not
12 be in the line for any sort of promotion or may face some sort
13 of adverse employment consequence. It would help to know what
14 their employment status is and whether or not they actually are
15 in the pipeline of some sort. It depends on what they are
16 doing. Do you have any information on what they actually are
17 currently doing and how that relates to what they may have
18 done?

19 Because, for example, to exaggerate and make the
20 point, if for example that first person worked in the public
21 relations industry -- again, if that person is currently
22 employed in the mailroom at the public relations company,
23 regardless of what the prior employment was, if that person is
24 in a position there in the mailroom where there is not any sort
25 of the pipeline for any sort of immediate advancement of his or

C436mooc

1 her career then that sort of limits the potential of
2 retaliation in this that situation.

3 Wouldn't you agree?

4 MS. WIPPER: Understood, yes. I don't think that is
5 the case of any of that these people. I think they are in
6 career positions where they are expecting to progress and stay
7 in the industry. There is one declarant who is a HR
8 professional. I think she is in the industry, but I don't know
9 if it would be considered the same. She is an HR employee.
10 She is not a PR, a public relations professional. She works in
11 the PR industry.

12 THE COURT: So taking that person as an example, the
13 close-knit nature of the PR industry may not affect her the
14 same way, wouldn't you agree?

15 MS. WIPPER: She should probably have other
16 opportunities outside of PR if she is in HR. Also, in HR to
17 submit a declaration in a discrimination case as an HR employee
18 is a pretty significant thing to do. So I think her issues are
19 unique in that respect. Also, she happens to be the HR
20 employee who investigated the sexual harassment complaint
21 against the president. Also, I don't know how that makes her
22 obviously fearful about him in particular. But, yes, I believe
23 that her opportunities would be broader than just PR because
24 she has no more transferable skills.

25 THE COURT: Wouldn't that person's situation be less

C436mooc

1 unique and more general the fact that they are in HR and they
2 are involved in this sort of situation that it is no longer
3 unique to this industry. It is just general sense of
4 retaliation from any and everybody, correct? Because there
5 would be the fear if someone is working in HR and they are
6 involved in this sort of lawsuit, there is a concern that any
7 employer in any industry, whether it is PR, food service, sport
8 management, would not want that person working for them,
9 correct, that is a more generalized concern and fear of
10 retaliation and then how does that make this different from any
11 other case?

12 MS. WIPPER: Well, what is different about this case
13 is I think this stage of the proceedings. So because this is a
14 nondispositive motion, I think that is why this is different.
15 Where this normally comes up in the case law is on summary
16 judgment, which is a completely different stage of the case
17 where substantive rights are at issue and it is unquestionably
18 in the Second Circuit a judicial document and in support of a
19 summary judgment motion, which is what makes this different
20 than from the other case law that was referenced by defense
21 counsel.

22 With respect to the HR declarant, I do believe she has
23 more opportunities outside of PR. I do think she does have a
24 real fear of the president here and specific retaliation with
25 respect to him because of her involvement with his complaint

C436mooc

1 that happened and is at issue in this case. So she does have a
2 more general position and more general opportunities, but she
3 also has a more acute fear due to her relationship in that
4 investigation.

5 THE COURT: That gets back again to what is it that
6 she is afraid of that he could possibly do to her?

7 MS. WIPPER: The same comments I made earlier about
8 the disparagement. Now his ability to negatively impact her
9 employment opportunities would be a lot less because I would
10 assume that his fear of influence would be in PR only. So the
11 fact that she could go elsewhere would probably lessen his
12 ability to impact if he was doing that to impact her employment
13 opportunities.

14 THE COURT: Defendants.

15 MS. CHAVEY: Your Honor, what I wanted to mention was
16 all of this speculative retaliation is illegal. There are laws
17 that prohibit the kinds of actions that plaintiffs' counsel is
18 speculating on. There are laws that protect people who
19 participate in proceedings like this one. Monique DaSilva
20 Moore has very cable counsel. I am sure that any other
21 declarant who felt that they had been illegally retaliated
22 against by their employer would have the opportunity to retain
23 counsel or not and seek the remedies that are available by law.

24 So all of these possibilities that are under
25 discussion have already been reviewed by the lawmakers and

C436mooc

1 there are laws that prohibit this and there are remedies to
2 address them. So whether it is the antiretaliation provisions
3 of the discrimination laws or defamation laws or other common
4 law theories, there are protections under the law that exist
5 already. So to create remedies within the context of this case
6 for the potential that a third party who isn't represented here
7 might do something at the behest of somebody else is just way
8 out on a limb. And if any of those things were to happen,
9 which we don't think they would but none of us can predict for
10 sure into the future, there are remedies for those things.

11 THE COURT: Thank you.

12 Let me hear from plaintiffs. Any other arguments the
13 plaintiffs would like to advance on this point?

14 MS. WIPPER: Your Honor, the plaintiffs would propose
15 that we have the opportunity to brief the issue if you are
16 interested in more facts that we can provide from the
17 declarants to assist in your decision.

18 THE COURT: Thank you. I don't think it is necessary
19 to brief this.

20 Any other arguments from plaintiffs.

21 MS. WIPPER: No.

22 THE COURT: I am going to deny plaintiffs' requests to
23 have these declarations filed under seal. I think good cause
24 has not been shown.

25 The other issue you wanted to address was this issue

C436mooc

1 of the filing of an amicus brief. I am inclined to reject the
2 filing of an amicus brief. I don't think it is necessary. I
3 don't think I need to hear anything from amicus in this case.
4 I don't think an amicus case will be necessary so the parties'
5 position on that is moot.

6 I think that is everything we need to deal with today.
7 Is there anything else from plaintiffs today?

8 MS. WIPPER: Yes, your Honor. Can we have until
9 Friday to speak to the declarants about whether they would want
10 to withdrew any of the declarations given your ruling?

11 THE COURT: Defendants have any position on that?

12 MS. CHAVEY: We have no objection to that.

13 THE COURT: That's fine.

14 Anything else from plaintiffs today?

15 MS. WIPPER: No.

16 THE COURT: Anything else from defendants today?

17 MS. CHAVEY: Judge, there are two open issues. One of
18 them is the plaintiffs submitted a letter I believe last week
19 and we received it yesterday asking your Honor to decide both
20 the motion for conditional certification and the motion to
21 amend the complaint. I don't know if you wanted to hear from
22 defendant MSL on that or whether you or Magistrate Judge Peck
23 will rule on the motion to amend the complaint in the first
24 instance.

25 THE COURT: I will rule on both of those in the first

C436mooc

1 instance.

2 MS. CHAVEY: Okay.

3 THE COURT: Thank you. Anything else?

4 MS. CHAVEY: No. Thank you, your Honor.

5 THE COURT: I think the defendants had a request to
6 file documents under seal. There is no objection to that, is
7 that correct?

8 MS. CHAVEY: Your Honor, that is right. We did file a
9 request to seal the documents that we submitted in support of
10 our opposition to their conditional certification motion.
11 Those documents that had been marked as "confidential" in the
12 course of discovery, we were seeking to file those under seal
13 as the plaintiffs did.

14 MS. WIPPER: Your Honor, we're going to object. The
15 defendants have not articulated good cause for anything that
16 they have designated as "confidential" and "attorneys eyes
17 only." Given your ruling today, we are going to object and we
18 would also like to unseal the documents that we filed because
19 it has complicated this filing -- filing the amended complaint
20 under seal, filing the briefing, filing all the documents. So
21 we would request that they are articulate good cause on why all
22 of the company policies should be submitted under seal as well.

23 THE COURT: Defense counsel.

24 MS. CHAVEY: This is the first we're hearing this, but
25 in any event what we're most focused on in terms of the

C436mooc

1 briefing on the conditional certification motion is the
2 compensation information. This is the salary information for
3 individuals who are or were employed by MSL Group during the
4 period in question. I don't recall that we submitted in
5 support of our opposition brief any policies or things like
6 that -- if we could talk to the plaintiffs counsel about it,
7 there might be things that we would agree that don't need to be
8 confidential and filed under seal. Certainly our position
9 would be that confidential information for individuals should
10 be filed under seal and should not be public information.

11 THE COURT: Let's give the parties an opportunity to
12 try to speak to each other about this and then let's have the
13 parties file joint status report on April the 17th. In that
14 status report let us know if the parties have been able to
15 resolve that. And if not, let's have the parties submit a very
16 brief, proposed briefing schedule on this issue. Let's have
17 the parties submit a briefing schedule on that if the parties
18 cannot have agreement on that on April 17th.

19 Anything else today?

20 MS. CHAVEY: No. Thank you.

21 MS. NURHUSSEIN: No. Thank you.

22 THE COURT: Thank you very much.

23 o0o